

ORIGINAL

RESCISSION AGREEMENT AND MUTUAL RELEASE

THIS RESCISSION AGREEMENT AND MUTUAL RELEASE ("Rescission") is made and entered into as of February 1, 2017, by and among CITY OF FLORESVILLE, TEXAS, a Texas Home Rule Municipality ("City"), and HEARTLAND PARK AND RECREATION, LLC., a Texas Limited Liability Corporation ("Heartland"). City and Heartland may be referred to herein as the "Parties" collectively or a "Party" individually.

RECITALS

WHEREAS, City and Heartland are nominally parties to that certain Construction Agreement, dated October 7, 2016 ("Agreement"), pursuant to which Heartland assumed certain responsibilities for construction of a park project for the City in exchange for monetary compensation in the amount of \$2,222,300.00;

WHEREAS, on September 22, 2016 the City by City Council action authorized a plan as set forth in the attachments included with the Agreement ("Park Plan"), but there is a potential misunderstanding regarding the issuance of specific authorization for entering into a contract with Heartland to begin construction. In addition, fund availability due to timing of receipt of monies to be dedicated to construction was inadequate pursuant to the laws of the state of Texas;

WHEREAS, the parties now desire to unwind and rescind the transactions referenced in the above Agreement and any other agreements between the Parties relating to the Park Plan due to, among other reasons, certain necessities to be in compliance with state law and specific approvals for appropriation of funds; and

WHEREAS, to accomplish the unwinding of the Agreement the Parties execute this Rescission subject to the conditions set forth below.

NOW, THEREFORE, the Parties hereby agree as follows:

1. **RESCISSION OF AGREEMENT**

On the terms and subject to the conditions of this Rescission, the Parties hereby agree to a mutual release of the Agreement, and all other agreements executed prior to the date of execution of this Rescission, between the Parties as such may relate to construction of the Park Plan.

2. **MUTUAL REPRESENTATIONS AND WARRANTIES; COVENANTS**

Each party represents and warrants to the other party that:

2.1 Authorization. All corporate or government action on the part of the respective party and its nominees, officers, directors and shareholders necessary for the authorization, execution and delivery of this Agreement and the performance of all obligations of the respective party hereunder has been taken. This Agreement constitutes a valid and legally binding obligation of the parties, enforceable in accordance with its respective terms.

2.2 Agreement Not in Contravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions provided for herein will (i) result in the material breach of or constitute a material default or give rise to any right of termination, cancellation or acceleration under any of the terms, conditions, or provisions of any lease, license, promissory note, contract, agreement, mortgage, deed of trust or other instrument or document to which each of the parties is a party, or (ii) violate any order, writ, injunction, decree, law, statute, rule or regulation applicable to any of the Parties.

2.3 Information and Statements. No representation or warranty made by or on behalf of the parties with respect to the terms of this Rescission contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements so made, in light of the circumstances under which they are made, not misleading.

3. MUTUAL RELEASE

3.1 Each Party on behalf of itself and its respective partners, agents, assigns, heirs, officers, directors, employees executors, and attorneys ("Affiliates") hereby forever and finally releases, relieves, acquits, absolves and discharges the other party and their Affiliates from any and all losses, claims, debts, liabilities, demands, obligations, promises, acts, omissions, agreements, costs and expenses, damages, injuries, suits, actions and causes of action, of whatever kind or nature, whether known or unknown, suspected or unsuspected, contingent or fixed, that they may have against the other party and their Affiliates, including without limitation claims for indemnification, based upon, related to, or by reason of any matter, cause, fact, act or omission occurring or arising at any moment out of the Agreement.

3.2 Each Party acknowledges that this mutual release does not constitute any admission of liability whatsoever on the part of any of the undersigned.

3.3 Each Party represents and warrants that there has been no assignment or transfer of or giving of a security interest in or encumbrance upon any interest in any claim which it or its Affiliates may have against any other Party. Each of the Parties further represents that such Party: (i) has carefully read this Rescission; (ii) knows the contents of this Rescission; (iii) has had the advice of counsel of such Party's choosing in connection with the subject matter hereof, and the advice thereof is reflected in the provisions of this Rescission; and (iv) has not been influenced to any extent whatsoever in doing so by any other Party or by any other person or entity, except for those representations, statements and

promises expressly set forth herein.

4. REQUIREMENTS FOR RESCISSION TO BE EFFECTIVE

4.1 This Rescission shall become effective when: (1) this Rescission is executed and delivered to all of the parties hereto, (2) a contract for the construction of Phase 1 of the Park Plan with an effective date of September 22, 2016, and substantially similar to that attached as Exhibit A hereto, is executed and delivered to all Parties, and (3) a contract for the construction of Phase 2 of the Park Plan with an effective date of January 4, 2017, and substantially similar to that attached as Exhibit B hereto, is executed and delivered to all Parties.

5. INDEMNIFICATION

Each party shall defend, indemnify, and hold the other harmless from and against any and all losses, damages, liabilities and expenses (including penalties and attorneys' fees) which are incurred or suffered by or imposed upon the other party arising out of or relating to (i) any failure or breach by the party to perform any of its covenants, agreements or obligations under this Agreement, or (ii) any inaccuracy or incompleteness of any of the representations and warranties of the party contained in this Agreement or in any Exhibit delivered in connection with this Agreement.

6. MISCELLANEOUS

6.1 Counterparts. This Rescission may be executed in any number of counterparts, including facsimiles thereof, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

6.2 Entire Agreement. Unless otherwise specifically agreed in writing, this Rescission represents the entire understanding of the parties with reference to the transactions set forth herein and supersede all prior warranties, understandings and agreements heretofore made by the parties, and neither this Rescission nor any provisions hereof may be amended, waived, modified or discharged except by an agreement in writing signed by the party against whom the enforcement of any amendment, waiver, change or discharge is sought.

6.3 Specific Performance. The parties agree that irreparable damage would occur in the event any provision of this Rescission was not performed in accordance with the terms thereof and that a Party seeking enforcement of this Rescission shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

6.4 Assignment of Agreement. This Rescission shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns. No Party may assign either this Rescission or any of its rights, interests or obligations hereunder without the prior written approval of the other Party.

6.5 Governing Law and Attorneys' Fees. This Rescission shall be governed by and construed in accordance with the laws of the State of Texas with venue agreed upon as Wilson County, Texas. In the event of any action at law or suit in equity in relation to this Rescission or other instrument or agreement required hereunder, the prevailing party in such action or suit shall be entitled to receive its or his attorneys' fees and all other costs and expenses of such action or suit.

6.6 Further Action. In case at any time after the execution date of this Rescission any further action is necessary or desirable to carry out the purposes of this Rescission the appropriate person or persons shall take such action as promptly as practicable and authorized by law.

6.7 Severability. Any term or provision of this Rescission that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Rescission to be executed and effective as of the day and year first above written.

CITY OF FLORESVILLE, TEXAS



By: Cecelia Gonzalez-Dippel
Mayor Cecelia Gonzalez-Dippel

Date: 2/9/2017

ATTEST:

Monica Cordova
Monica Cordova, City Secretary

ACTION BY THE CITY COUNCIL

Upon motion duly made pursuant to Agenda Item 6.b by Councilperson Nissen, seconded by Councilperson Jimenez, the public record does duly reflect that Agenda Item 6.b authorized the execution of this Rescission and associated documents as approved by a vote of 5 in favor, 0 opposed, 0 abstaining, and 0 absent on January 26, 2017.



By: Cecelia Gonzalez-Dippel
Mayor Cecelia Gonzalez-Dippel

Date: 2/9/2017

ATTEST:

Monica Cordova
Monica Cordova, City Secretary

HEARTLAND PARK & RECREATION,
LLC

By: [Signature]

Print Name: SEAN SPENCER

Title: GENERAL MANAGER

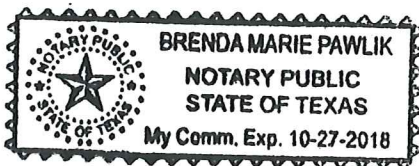
Date: 2/9/2017

STATE OF TEXAS §

COUNTY OF Wilson §

Before me, the undersigned authority in and for Wilson County, Texas, on this day personally appeared SEAN SPENCER, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the General Manager of Heartland Park & Recreation, LLC, and that he is authorized by said legal entity to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this the 9 day of February, 2017.



[Signature]

Notary Public in and for the State of Texas



ORIGINAL

CONSTRUCTION AGREEMENT

This construction Agreement ("Agreement") is entered into effective January 4, 2017, ("Effective Date"), by and between Heartland Park & Recreation, LLC, ("Contractor"), and the City of Floresville, Texas ("City"), for the construction of certain improvements described in Exhibit "A" attached hereto (City of Floresville Athletic Park - EDC Project or ("Project"). For convenience, Contractor and City may hereinafter be referred to collectively as "parties", and individually as a "party".

For and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. Employment of Contractor and Scope of the Work.

1. City agrees to engage Contractor and Contractor hereby agrees to perform the work and services consisting of the construction of the City of Floresville Athletic Park - EDC Project, in accordance with the bid/quote of Heartland Park and Recreation, LLC, attached hereto as Exhibit "A".

B. Contract Documents.

1. The Contract Documents consist of this Agreement and following exhibits attached hereto:
 - i. Exhibit A - Heartland Park & Recreation, LLC, spreadsheet for the City of Floresville Athletic Park Project - EDC;
 - ii. Exhibit B - Site Plan by Hayes Engineering, Inc.;
 - iii. Exhibit C - Heartland Park & Recreation, LLC, Project Inspection Form (sample);
 - iv. Exhibit D - Heartland Park & Recreation, LLC, Invoice (sample);
 - v. Exhibit E - Heartland Park & Recreation, LLC, Conditional Waiver and Release Upon Progress Payment (sample); and
 - vi. Exhibit F - Conditional Waiver and Release Upon Final Payment (sample).

C. Time for Completion

1. The work to be performed under this Contract shall be commenced on or before January 4, 2017, and shall be substantially completed on or before August 31,

2017, ("Date of Substantial Completion"). Time is of the essence for all deadlines stated in this Contract. For purposes of this Agreement, the term "substantially complete" shall mean that the improvements and facilities are ready to be used for their intended purpose, save and except for minor items to be addressed by Contractor on the City inspector's "punch list" which must be addressed prior to final approval and acceptance of the Project by the City.

2. Subject to Section H.10., Contractor acknowledges and agrees that it shall be liable to City in an amount equal to the sum of \$100.00 per day for each day that the Project is not complete by the Date of Substantial Completion. Contractor further agrees that any damages incurred by City as a result of Contractor's delay are not easily calculable and that this liquidated damages amount does not constitute a penalty, but rather constitutes a fair and reasonable estimate of the City's actual damages resulting from Contractor's unreasonable delay.

D. Contract Price

1. The Contract price shall be the sum of **\$1,222,300.00** as evidenced by Exhibit A attached hereto, and shall not exceed such price without prior authorization in the form of a valid change order executed in accordance with Section E of this Agreement.

E. Change in the Work

1. Neither the scope of the work, the Date of Substantial Completion nor the Contract Price under this Agreement may be modified by Contractor without the consent of the City. The City's consent may only be given by the execution of one or more change orders. To be valid, a change order must be in writing, must specify the specific change requested, (e.g., materials, specifications, contract price, etc.), must itemize the additional cost associated with such requested change, and must be signed by an authorized City representative. If a change order is requested to modify the Date of Substantial Completion, the change order must specify the reason for the delay.
2. The City may request that Contractor perform additional work outside the scope of this Agreement, in accordance with applicable law, but Contractor is under no obligation to grant such request if the City and Contractor cannot reach an agreement as to the amount of additional compensation that would be required to perform the additional work. This change must be set forth in a change order executed in conformance with this Section E.
3. The City may request in writing that Contractor perform less work than what is required by this Agreement, and, in such case, the Contractor and the City shall agree to reduce the Contract Price in accordance with the reduction of work requested. This change must be set forth in a change order executed in conformance with this Section E.

F. Construction Management.

1. The City and Contractor shall each designate a representative to be the primary contact for all issues related to the Project. The City's representative or his designee shall have a right to inspect the Project at all times. However, neither the City's inspector nor the City shall have any liability for failing to identify defects in the work or services performed by Contractor. The City may issue a Stop Work Order if the City's inspector determines that the work or services performed by Contractor do not comply with the requirements of applicable law or any of the Contract Documents. The City shall not be required to make any further payment to Contractor under this Agreement until such defects are remediated by Contractor to the City's satisfaction.

G. Compensation and Method of Payment

1. The designated representatives of the parties shall meet at a minimum of once per month, but no more than two times per month to determine the percentage of the work performed by Contractor for payment to the Contractor. The representatives shall then complete and sign the Project Inspection Form attached hereto as Exhibit "C".
2. Contractor shall then submit to the City an Invoice in a form substantially similar to the form attached hereto as Exhibit "D". The Invoice shall identify the percentage of the work completed by contractor (based on the most recently signed Project Inspection Form) and the amount due to Contractor, which shall equal the product of the percentage of completion and the Contract Price. The Invoice shall be accompanied by a signed and notarized Conditional Waiver & Release on Progress Payment on a form substantially similar to the form attached hereto as Exhibit "E".
3. The City shall pay the amount due to Contractor within 10 days from the date of the City's receipt of the Invoice.
4. The City may withhold payment to Contractor in the event that the City is notified by a subcontractor or supplier that the subcontractor or supplier has not been paid by Contractor. Such payment may be withheld until such time as Contractor supplies sufficient evidence (e.g., releases or waivers signed by the subcontractor or supplier) to City that the problem has been rectified.
5. After the Date of Substantial Completion, as determined by the City's inspector, the City shall release the final payment to Contractor upon completion of the following:
 - i. City's receipt of a final Invoice and Conditional Waiver & Release Upon Final Payment form (attached hereto as Exhibit "F") confirming that all bills for labor and materials have been paid and that no liens were filed on the Project;

- ii. The Contractor's completion of any items listed on the City's inspector's punch list (to be given to Contractor on the Date of Substantial Completion); and
- iii. The City's acceptance of the Project, which acceptance shall not be unreasonably delayed or withheld.

H. **Contractor's Rights, Duties and Warranties**

1. Contractor warrants and represents that:
 - i. the materials and equipment furnished under this Agreement will be of good quality and new unless the contract Documents require or permit otherwise;
 - ii. Contractor shall perform the work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard; and
 - iii. the work will conform to the requirements of the contract Documents and will be free from defects, except for those inherent in the quality of the work the contract Documents require or permit.
2. Contractor further warrants and represents to City that:
 - i. it has all personnel required in performing the work under this Agreement;
 - ii. all of the services required hereunder will be performed by Contractor or under Contractor's supervision; and
 - iii. that all personnel engaged in the work shall be qualified to perform such work.
3. Contractor shall furnish, at the Contractor's own cost and expense, all of the materials, supplies, machinery, equipment, tools, superintendence, labor (either directly or through subcontractors), insurance and other accessories and services as may be necessary in order to complete the Project in accordance with the Contract Documents.
4. Contractor shall at all times keep the jobsite free from all disposable material, debris and rubbish as is practicable and shall remove same from any portion of the jobsite when it becomes objectionable or when it interferes with the progress of the work.
5. During the construction, Contractor shall not damage improvements on any private or public property, including the jobsite. In the event Contractor damages such property, Contractor shall, at its own expense, immediately and fully restore such property to the condition existing prior to the damage.
6. Upon completion of the Work, Contractor shall remove from the jobsite all, materials, tools and equipment belonging to Contractor and restore the jobsite to

an appearance and condition as specified in the Contract Documents or, if none is specified, to an appearance and condition acceptable to the City.

7. Contractor shall have on the jobsite at all time, as its agent, a competent superintendent capable of reading and thoroughly understanding the Contract Documents, and who is thoroughly experienced in the type of work being performed. The Superintendent shall have full authority to execute orders or directions and to promptly supply such materials, equipment, tools, labor and incidentals as may be required to complete the Project
8. The Contractor shall be responsible for all work performed by any subcontractors in accordance with Section 2251.022 of the Texas Government Code.
9. Contractor may suspend work on the Project in the event Contractor has complied with the proper procedures for procuring payment (as set forth in Section G) and the City does not timely pay Contractor in accordance with Section G. Should the City's failure to pay Contractor for a period in excess of 30 days from the date payment is due, Contractor may declare the City to be in material breach of this Agreement and exercise its rights under Section N. of this Agreement.
10. Contractor's timely performance under this Agreement may be excused for acts of God, by an act or neglect of the City or of an employee of the City, or of a separate contractor employed by the City; or by changes ordered in the Project; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes not reasonably within Contractor's control; or by delay authorized by the City pending mediation and arbitration. The date of Substantial Completion shall be extended by change order for the number of days the project is delayed pursuant to this paragraph, but not otherwise, and no penalty will be assessed to contractor as long as the work to be performed under this contract shall be substantially completed on or before the extended Date of Substantial Completion. However, Contractor must still submit change orders requesting extensions of time in accordance with Section E. of this Agreement.

I. **INDEMNITY.**

1. **TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS CONTRACT OR OTHER ACTIVITIES OF CONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY ACT OR**

**OMISSION OF CONTRACTOR OR ANYONE DIRECTLY OR
INDIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR
WHOSE ACTS CONTRACTOR MAY BE LIABLE.**

J. Insurance

1. Contractor agrees to maintain insurance for comprehensive general liability, automobile liability insurance, and worker's compensation during the term of this Agreement in the amounts not less than those set forth below and meeting the following requirement:
 - i. Commercial General Liability Insurance at minimum combined single limits of \$500,000.00 per occurrence and \$1,000,000.00 general aggregate for Bodily injury and Property Damage.
 - ii. Workers Compensation Insurance at statutory limits, including employers liability coverage at minimum limits of \$50,000.00 by disease aggregate, \$100,000.00 by disease - per occurrence, \$100,000.00 per occurrence - each accident.
 - iii. Commercial Automobile Liability Insurance at minimum combined single limits of \$1,000,000.00 per occurrence for bodily injury and property damage, including non-owned and hired car coverage.
2. All such policies shall contain a waiver of subrogation rights against the City, and Contractor shall, prior to the commencement of the work, furnish the City with a valid Certificate of Insurance covering all workers and subcontractors, which shall name the City as an additional insured, which will be provided.

K. Subcontractors

1. Contractor shall solicit bids from local subcontractors and service providers where possible, provided that the City reserves the right to object to any subcontractor that the City deems, in its sole discretion, to be objectionable. Prior to commencing the work, contractor shall submit a list of subcontractors that Contractor intends to retain to work on the Project. Contractor shall not utilize any objectionable subcontractor on the Project.

L. Dispute Resolution

1. The parties agree to use reasonable efforts to resolve any and all disputes regarding the subject matter of this Agreement without resorting to litigation. If a dispute should arise regarding any aspect of this Agreement, the parties agree to meet informally to discuss the possible solutions to the dispute. Should the informal meeting fail to resolve the dispute, the parties may resort to litigation in a court of competent jurisdiction.

M. Additional Terms - TIPS - Meeting Bid Requirements

1. The City shall issue to Contractor purchase orders for the Project totaling the entire amount of the Contract Price and reflecting the same as the line item bid/quote provided by Contractor to the City, which shall state on each purchase order TIPS Purchase/Transaction. Contractor shall submit all documentation to and through TIPS to satisfy all bid requirements as outlined by the guidelines of the State of Texas.

N. **Termination of Agreement.**

1. If, for any reason, Contractor shall fail to fulfill in timely and proper manner its obligation under this Agreement, City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination by certified mail, return receipt requested, at the address specified below which shall specifying the effective date thereof, which notice must be delivered to Contractor at least three days before the effective date of such termination.
2. In the event City shall fail to pay Contractor in accordance Section G. or H.9., Contractor may terminate this Agreement by providing the City with written notice of such termination by certified mail, return receipt requested, at the address specified below.
3. Upon the City's termination pursuant to this Section N., Contractor shall immediately begin taking any necessary steps to cease work and leave the jobsite. Contractor shall be entitled to payment of such amounts as shall compensate Contractor for the services satisfactorily performed on or before the termination date in accordance with this Agreement. The City shall not be required to reimburse Contractor for any services performed or expenses incurred after notice of termination has been received by Contractor.
4. In the event this Agreement is terminated by either party as a result of the material breach of this Agreement by the other party, the non-breaching party may elect to file suit in a court of competent jurisdiction and recover its actual, but not consequential, damages from the breaching party.

O. **Miscellaneous Provisions**

1. **City Not Obligated to Third Parties**
City shall not be obligated or liable hereunder to any party other than Contractor, including, but not limited to, subcontractors and members of the public.
2. **When Rights and Remedies Not Waive.**
In no event shall the making by City of any payment to Contractor constitute or be construed as a waiver by City of any breach of covenant or any default which may exist on the part of Contractor, and the making of any such payment by City while any such breach or default shall exist in no way impairs or prejudices any right or remedy available to City in respect to such breach or default.

3. **Assignability**

Contractor may not assign, convey or transfer its interest, rights and duties under this Agreement without the prior written consent of City.

4. **Notices**

Any notices, bills, invoices, or reports required by this Agreement shall be sufficient if sent by the parties in the United States mail, postage paid, return receipt requested or via overnight delivery service, to the addresses noted below and shall be effective upon receipt if mailed to:

IF TO CITY:

City of Floresville
1120 D Street
Floresville, TX 78114

IF TO CONTRACTOR:

Heartland Park & Recreation, LLC
Attn: Mike Spencer
P.O. Box 505
White Oak, Texas 75693

Either party may change the address and contact information stated in this paragraph by providing notice to the other party in accordance with this section.

5. **Independent Contractor**

Contractor is an independent contractor under this Agreement and shall not under any circumstances be considered an employee of the City.

6. **Severability**

If any of the terms or provisions of this Agreement are held for any reason to be invalid, void, illegal or unenforceable as a matter of law, the remainder of the Agreement shall remain in full force and effect and shall not be impaired, affected or invalidated by such holding.

7. **Amendment**

The Contract Documents may not be amended or altered except by a written document signed by both parties.

8. **Authority to Execute**

The parties hereby warrant and represent that the undersigned person or persons are properly authorized to execute this Agreement on behalf of the parties.

9. **Governing Law/Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action, arbitration or mediation brought hereunder shall lie in Wilson County, Texas.

10. **Attorney's Fees**

If it becomes necessary for any party to file suit to interpret or enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party, reasonable attorney's fees and costs of court.

Signed to be effective on the Effective Date.



ATTEST:

Monica Cerdas
City Secretary

CITY OF FLORESVILLE, TEXAS

By: Cecelia Gonzalez-Dippel

Print Name: Cecelia Gonzalez-Dippel

Title: Mayor

Date: 2/9/2017

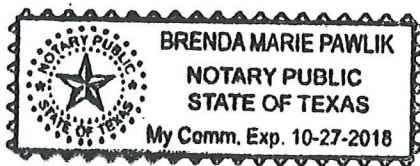
STATE OF TEXAS

COUNTY OF Wilson

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Before me, the undersigned authority in and for Wilson County, Texas, on this day personally appeared Cissy Gonzalez-Dippell, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that she is the Mayor of City of Floresville, Texas, and that he is authorized by said legal entity to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this the 9 day of February,
2017
2016.



Brenda Marie Pawlik
Notary Public in and for the State of Texas

Brenda Marie Pawlik
Print Name

My Commission Expires: 10-27-18

HEARTLAND PARK & RECREATION, LLC

By: [Signature]

Print Name: SEAN SPENCER

Title: GENERAL MANAGER

Date: 2/9/2017

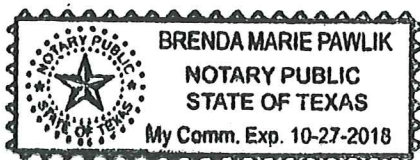
STATE OF TEXAS

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COUNTY OF Wilson §

Before me, the undersigned authority in and for Wilson County, Texas, on this day personally appeared Sean Spencer, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the General Manager of Heartland Park & Recreation, LLC, and that he is authorized by said legal entity to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

2017
2016. Given under my hand and seal of office, this the 9 day of February,



[Signature]
Notary Public in and for the State of Texas
Brenda Marie Pawlik
Print Name

My Commission Expires:

10-27-18

Athletic Park Project

HEARTLAND

EXHIBIT A

Description	Number	Unit Cost	Total	Total Project
Freight/Deliver Installation			\$ 2,000.00	
			\$ 10,000.00	
Total Athletic - Other			\$ 77,000.00	\$ 77,000.00
Park Entry & Plaza				
Concrete Walks 15' width	5000 sq.ft.	\$ 5.50	\$ 27,500.00	
Concrete Walk around Tree 15'	8576 sq.ft.	\$ 5.50	\$ 47,168.00	
Stone Towers 4'X4' X 14' height	2	\$ 10,000.00	\$ 20,000.00	
Decorative Fencing			\$ 2,000.00	
6' Benches with Backs	8	\$ 400.00	\$ 3,200.00	
Solar Trail-Walk Lights	15	\$ 1,200.00	\$ 18,000.00	
Landscaping			\$ 30,000.00	
Shade Structure 15' X 20'	4	\$ 4,600.00	\$ 18,400.00	
Concrete Slabs 15'X 20'	4	\$ 1,650.00	\$ 6,600.00	
Other Walks	6000 sq.ft.	\$ 5.50	\$ 33,000.00	
Installation			\$ 20,000.00	
Freight/Delivery			\$ 2,000.00	
Total Entry & Plaza			\$ 227,868.00	\$ 227,868.00
Parking Improvements				
6" Base Materials Compacted	850 Tons	\$ 50.00	\$ 42,500.00	
Prep & Materials Installation			\$ 40,000.00	
ADA Handicap Parking - Concrete	900 sq.ft.	\$ 5.50	\$ 4,950.00	
900 sq.ft.				
20' X 50' Concrete Drop Off Area	1000 sq.ft.	\$ 5.50	\$ 5,500.00	
Total Parking Improvement Estimate			\$ 92,950.00	\$ 92,950.00

Description

Site Amenities All Recycled

8' Benches with Backs
8' Picnic Table
Standard Trash Recep
Mounts

Sub Total

Freight/Delivery
Installation

Total Site Amenities

Field Lighting Equipment

Baseball Fields - 2- 300', 2-225'

Equipment & Materials

Include Pole Erection and Assembly

Including Electrical for Field Lighting
including underground service to
each pole

Football Field Lighting

Includes all Electrical for Park
Runs to Concession-Restroom
Scoreboards & Outlets

Total Lighting & Electrical

Number	Unit Cost	Total	Total Project
4	\$ 750.00	\$ 3,000.00	
10	\$ 1,095.30	\$ 10,953.00	
10	\$ 560.00	\$ 5,600.00	
10	\$ 45.00	\$ 450.00	
		\$ 19,553.00	
		\$ 3,200.00	
		\$ 5,000.00	
		\$ 27,753.00	\$ 28,203.00
		\$ 390,000.00	
1		\$ 70,000.00	
		\$ 460,000.00	\$ 460,000.00

Description	Number	Unit Cost	Total	Total Project
T Ball Field Backstops				
10' with Top & Wings	4	\$ 2,999.99	\$ 11,999.96	
Intallation			\$ 3,000.00	
Total T Ball Backstops			\$ 14,999.96	\$ 14,999.96
Sub Total New Athletic Park				\$ 1,154,500.96
TIPS Discount				\$ (22,986.93)
Sub Total				\$ 1,131,514.03
Other				
Contingency Allowance			\$ 60,785.97	
Superintendent			\$ 30,000.00	
Total Other			\$ 90,785.97	\$ 90,785.97
Total EDC Park				\$ 1,222,300.00

Notes to Bid

Heartland Bid does not include underground electrical, transformers, trenching for power, field lighting and other site lighting other than Solar Lighting identified in the Heartland Bid.

Heartland Bid does include electrical and lighting budgets for Concession-Restroom and Band Shell on quotes where included. All Electrical Bid by Heartland is 5' off slab or location of determined need.

Bid does not include the moving of utilities, water lines, sewer lines, cable or any other like obstruction either known or unknown.

Heartland Bid does not include sewer line, water lines from Tap to 5' off the slab or location of determined need.
including pipe, trenching and labor for installation. Provided by the City of Floresville

Bid Proposal in total is subject to final surveying, Engineering on both Civil and MEP based upon the final
drawings and requirements set forth. Up or Down

All dirt work and site work is subject to final Civil Engineering Up or Down

Bid does not include permit fees from any governmental agency

Subject to Final Civil Engineering

Final MEP Engineering, final

Structural Engineering

and City Requirements

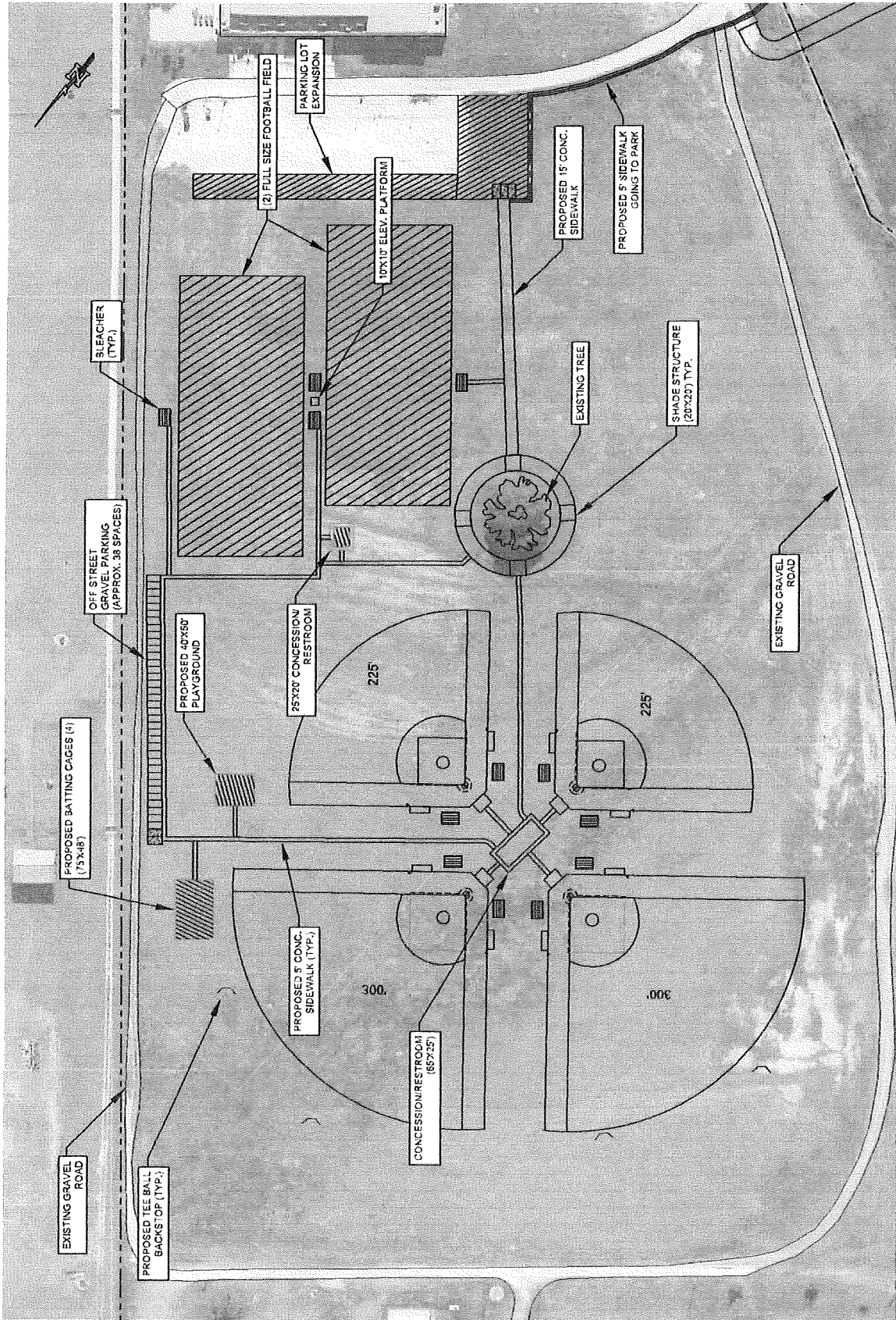
HEARTLAND PARK & RECREATION
BALL FIELD COMPLEX
CITY OF FLORESVILLE, TEXAS

HAYES ENGINEERING, INC.
1224 Highway 28, Commerce, TX 75001-3461
Tel: (940) 758-2010 • Fax: (940) 758-2599



DATE: 11/11/11
DRAWN BY: JLB
CHECKED BY: JLB
SCALE: 1"=40'
JOB NO.: 11-001-001

SHEET
1
OF 2





Project Inspection Form

Project: City of Floresville Athletic Park - EDC

Inspection # _____

Date: _____

Name of Inspectors: _____

Draw #: _____

Percentage of work completed _____ %.

Description

Please describe the current status of the Project since last inspection below

Heartland Park & Recreation, LLC Inspector's Signature

Date: _____

Floresville, Texas City Representative

Date: _____

If you need addition space, use the back of this form.

Please attach Photographs and/or other information that pertains to this Inspection report.

Send all documentation to Heartland Park & Recreation, LLC.

EXHIBIT C

Heartland Park & Recreation
PO Box 505
White Oak, Texas 75693-0505

866-388-1365

City of Floresville (EDC)
1120 D Street
Floresville, TX 78114

INVOICE DATE _____
OUR ORDER NO. _____
YOUR ORDER NO. _____
TERMS _____
SALES REP _____
SHIPPED VIA _____
F.O.B. _____
PREPAID or COLLECT _____

City of Floresville Athletic Park - EDC

Sales Tax Rate:

DIRECT ALL INQUIRIES TO:
Mike Spencer
800-388-1365
email: mike@heartlandplay.com

MAKE ALL CHECKS PAYABLE TO:
Heartland Park & Recreation
Attn: Accounts Receivable
PO Box 505
White Oak, Texas 75693-0505

PAY THIS
AMOUNT

EXHIBIT D



**CONDITIONAL WAIVER
AND
RELEASE UPON PROGRESS PAYMENT**

Project: City of Floresville Athletic Park - EDC

On receipt by the signer of this document of a check from _____
(maker of check) in the sum of \$ _____ payable to **HEARTLAND PARK & RECREATION, LLC**, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ to the following extent: stop notice, or bond right the undersigned has on the job of _____ to the following extent: _____.

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

EXHIBIT E

Authorized Signature

Street Address

STATE OF TEXAS §

COUNTY OF _____§

SUBSCRIBED AND SWORN TO AND ACKNOWLEDGED BEFORE ME on this _____ day of _____, 2017, to certify which witness my hand and seal of office.

Notary Public, State of Texas

EXHIBIT E



**CONDITIONAL WAIVER
AND
RELEASE UPON FINAL PAYMENT**

Project: City of Floresville Athletic Park - EDC

On receipt by the signer of this document of a check from _____
(maker of check) in the sum of \$ _____, payable to **HEARTLAND PARK & RECREATION, LLC**, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ to the following extent: stop notice, or bond right the undersigned has on the job of _____ to the following extent:

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

EXHIBIT F

Heartland Park & Recreation, LLC

Authorized Signature

Print Name

Street Address

City / State / Zip

STATE OF TEXAS §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____
_____, who first being duly sworn by me to be the person whose name is
subscribed to the foregoing, acknowledged to me that they executed the same for the purposes and
consideration therein expressed and in the capacity therein stated.

SUBSCRIBED AND SWORN TO AND ACKNOWLEDGED BEFORE ME on this _____
day of _____, 2017, to certify which witness my hand and seal of office.

Notary Public, State of Texas

EXHIBIT F



ORIGINAL

CONSTRUCTION AGREEMENT

This construction Agreement ("Agreement") is entered into effective September 22, 2016 ("Effective Date"), by and between Heartland Park & Recreation, LLC, ("Contractor"), and the City of Floresville, Texas ("City"), for the construction of certain improvements described in Exhibit "A" attached hereto (City of Floresville Athletic Park - City Park Project or ("Project")). For convenience, Contractor and City may hereinafter be referred to collectively as "parties", and individually as a "party".

For and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. Employment of Contractor and Scope of the Work.

1. City agrees to engage Contractor and Contractor hereby agrees to perform the work and services consisting of the construction of the City of Floresville Athletic Park - City Park Project, in accordance with the bid/quote of Heartland Park and Recreation, LLC, attached hereto as Exhibit "A".

B. Contract Documents.

1. The Contract Documents consist of this Agreement and following exhibits attached hereto:
 - i. Exhibit A - Heartland Park & Recreation, LLC, spreadsheet for the City of Floresville Athletic Park - City Park;
 - ii. Exhibit B - Site Plan by Hayes Engineering, Inc.;
 - iii. Exhibit C - Heartland Park & Recreation, LLC, Inspection Form (sample);
 - iv. Exhibit D - Heartland Park & Recreation, LLC, Invoice (sample);
 - v. Exhibit E - Heartland Park & Recreation, LLC, Conditional Waiver and Release Upon Progress Payment (sample); and
 - vi. Exhibit F - Heartland Park & Recreation, LLC, Conditional Waiver and Release Upon Final Payment (sample).

C. Time for Completion

1. The work to be performed under this Contract shall be commenced on or before November 15, 2016, and shall be substantially completed on or before August 31, 2017, ("Date of Substantial Completion"). Time is of the essence for all

deadlines stated in this Contract. For purposes of this Agreement, the term “substantially complete” shall mean that the improvements and facilities are ready to be used for their intended purpose, save and except for minor items to be addressed by Contractor on the City inspector’s “punch list” which must be addressed prior to final approval and acceptance of the Project by the City.

2. Subject to Section H.10., Contractor acknowledges and agrees that it shall be liable to City in an amount equal to the sum of \$100.00 per day for each day that the Project is not complete by the Date of Substantial Completion. Contractor further agrees that any damages incurred by City as a result of Contractor’s delay are not easily calculable and that this liquidated damages amount does not constitute a penalty, but rather constitutes a fair and reasonable estimate of the City’s actual damages resulting from Contractor’s unreasonable delay.

D. Contract Price

1. The Contract price shall be the sum of **\$1,000,000.00** as evidenced by Exhibit A attached hereto, and shall not exceed such price without prior authorization in the form of a valid change order executed in accordance with Section E of this Agreement.

E. Change in the Work

1. Neither the scope of the work, the Date of Substantial Completion nor the Contract Price under this Agreement may be modified by Contractor without the consent of the City. The City’s consent may only be given by the execution of one or more change orders. To be valid, a change order must be in writing, must specify the specific change requested, (e.g., materials, specifications, contract price, etc.), must itemize the additional cost associated with such requested change, and must be signed by an authorized City representative. If a change order is requested to modify the Date of Substantial Completion, the change order must specify the reason for the delay.
2. The City may request that Contractor perform additional work outside the scope of this Agreement, in accordance with applicable law, but Contractor is under no obligation to grant such request if the City and Contractor cannot reach an agreement as to the amount of additional compensation that would be required to perform the additional work. This change must be set forth in a change order executed in conformance with this Section E.
3. The City may request in writing that Contractor perform less work than what is required by this Agreement, and, in such case, the Contractor and the City shall agree to reduce the Contract Price in accordance with the reduction of work requested. This change must be set forth in a change order executed in conformance with this Section E.

F. Construction Management.

1. The City and Contractor shall each designate a representative to be the primary contact for all issues related to the Project. The City's representative or his designee shall have a right to inspect the Project at all times. However, neither the City's inspector nor the City shall have any liability for failing to identify defects in the work or services performed by Contractor. The City may issue a Stop Work Order if the City's inspector determines that the work or services performed by Contractor do not comply with the requirements of applicable law or any of the Contract Documents. The City shall not be required to make any further payment to Contractor under this Agreement until such defects are remediated by Contractor to the City's satisfaction.

G. Compensation and Method of Payment

1. The designated representatives of the parties shall meet at a minimum of once per month, but no more than two times per month to determine the percentage of the work performed by Contractor for payment to the Contractor. The representatives shall then complete and sign the Project Inspection Form attached hereto as Exhibit "C".
2. Contractor shall then submit to the City an Invoice in a form substantially similar to the form attached hereto as Exhibit "D". The Invoice shall identify the percentage of the work completed by contractor (based on the most recently signed Project Inspection Form) and the amount due to Contractor, which shall equal the product of the percentage of completion and the Contract Price. The Invoice shall be accompanied by a signed and notarized Conditional Waiver & Release on Progress Payment on a form substantially similar to the form attached hereto as Exhibit,"E".
3. The City shall pay the amount due to Contractor within 10 days from the date of the City's receipt of the Invoice.
4. The City may withhold payment to Contractor in the event that the City is notified by a subcontractor or supplier that the subcontractor or supplier has not been paid by Contractor. Such payment may be withheld until such time as Contractor supplies sufficient evidence (e.g., releases or waivers signed by the subcontractor or supplier) to City that the problem has been rectified.
5. After the Date of Substantial Completion, as determined by the City's inspector, the City shall release the final payment to Contractor upon completion of the following:
 - i. City's receipt of a final Invoice and Conditional Waiver & Release Upon Final Payment form (attached hereto as Exhibit "F") confirming that all bills for labor and materials have been paid and that no liens were filed on the Project;
 - ii. The Contractor's completion of any items listed on the City's inspector's punch list (to be given to Contractor on the Date of Substantial Completion); and

- iii. The City's acceptance of the Project, which acceptance shall not be unreasonably delayed or withheld.

H. **Contractor's Rights, Duties and Warranties**

1. Contractor warrants and represents that:
 - i. the materials and equipment furnished under this Agreement will be of good quality and new unless the contract Documents require or permit otherwise;
 - ii. Contractor shall perform the work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard; and
 - iii. the work will conform to the requirements of the contract Documents and will be free from defects, except for those inherent in the quality of the work the contract Documents require or permit.
2. Contractor further warrants and represents to City that:
 - i. it has all personnel required in performing the work under this Agreement;
 - ii. all of the services required hereunder will be performed by Contractor or under Contractor's supervision; and
 - iii. that all personnel engaged in the work shall be qualified to perform such work.
3. Contractor shall furnish, at the Contractor's own cost and expense, all of the materials, supplies, machinery, equipment, tools, superintendence, labor (either directly or through subcontractors), insurance and other accessories and services as may be necessary in order to complete the Project in accordance with the Contract Documents.
4. Contractor shall at all times keep the jobsite free from all disposable material, debris and rubbish as is practicable and shall remove same from any portion of the jobsite when it becomes objectionable or when it interferes with the progress of the work.
5. During the construction, Contractor shall not damage improvements on any private or public property, including the jobsite. In the event Contractor damages such property, Contractor shall, at its own expense, immediately and fully restore such property to the condition existing prior to the damage.
6. Upon completion of the Work, Contractor shall remove from the jobsite all, materials, tools and equipment belonging to Contractor and restore the jobsite to an appearance and condition as specified in the Contract Documents or, if none is specified, to an appearance and condition acceptable to the City.

7. Contractor shall have on the jobsite at all time, as its agent, a competent superintendent capable of reading and thoroughly understanding the Contract Documents, and who is thoroughly experienced in the type of work being performed. The Superintendent shall have full authority to execute orders or directions and to promptly supply such materials, equipment, tools, labor and incidentals as may be required to complete the Project
8. The Contractor shall be responsible for all work performed by any subcontractors in accordance with Section 2251.022 of the Texas Government Code.
9. Contractor may suspend work on the Project in the event Contractor has complied with the proper procedures for procuring payment (as set forth in Section G) and the City does not timely pay Contractor in accordance with Section G. Should the City's failure to pay Contractor for a period in excess of 30 days from the date payment is due, Contractor may declare the City to be in material breach of this Agreement and exercise its rights under Section N. of this Agreement.
10. Contractor's timely performance under this Agreement may be excused for acts of God, by an act or neglect of the City or of an employee of the City, or of a separate contractor employed by the City; or by changes ordered in the Project; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes not reasonably within Contractor's control; or by delay authorized by the City pending mediation and arbitration. The date of Substantial Completion shall be extended by change order for the number of days the project is delayed pursuant to this paragraph, but not otherwise, and no penalty will be assessed to contractor as long as the work to be performed under this contract shall be substantially completed on or before the extended Date of Substantial Completion. However, Contractor must still submit change orders requesting extensions of time in accordance with Section E. of this Agreement.

I. **INDEMNITY.**

1. **TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS CONTRACT OR OTHER ACTIVITIES OF CONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE.**

J. **Insurance**

1. Contractor agrees to maintain insurance for comprehensive general liability, automobile liability insurance, and worker's compensation during the term of this Agreement in the amounts not less than those set forth below and meeting the following requirement:
 - i. Commercial General Liability Insurance at minimum combined single limits of \$500,000.00 per occurrence and \$1,000,000.00 general aggregate for Bodily injury and Property Damage.
 - ii. Workers Compensation Insurance at statutory limits, including employers liability coverage at minimum limits of \$50,000.00 by disease aggregate, \$100,000.00 by disease - per occurrence, \$100,000.00 per occurrence - each accident.
 - iii. Commercial Automobile Liability Insurance at minimum combined single limits of \$1,000,000.00 per occurrence for bodily injury and property damage, including non-owned and hired car coverage.
2. All such policies shall contain a waiver of subrogation rights against the City, and Contractor shall, prior to the commencement of the work, furnish the City with a valid Certificate of Insurance covering all workers and subcontractors, which shall name the City as an additional insured, which will be provided.

K. **Subcontractors**

1. Contractor shall solicit bids from local subcontractors and service providers where possible, provided that the City reserves the right to object to any subcontractor that the City deems, in its sole discretion, to be objectionable. Prior to commencing the work, contractor shall submit a list of subcontractors that Contractor intends to retain to work on the Project. Contractor shall not utilize any objectionable subcontractor on the Project.

L. **Dispute Resolution**

1. The parties agree to use reasonable efforts to resolve any and all disputes regarding the subject matter of this Agreement without resorting to litigation. If a dispute should arise regarding any aspect of this Agreement, the parties agree to meet informally to discuss the possible solutions to the dispute. Should the informal meeting fail to resolve the dispute, the parties may resort to litigation in a court of competent jurisdiction.

M. **Additional Terms - TIPS - Meeting Bid Requirements**

1. The City shall issue to Contractor purchase orders for the Project totaling the entire amount of the Contract Price and reflecting the same as the line item bid/quote provided by Contractor to the City, which shall state on each purchase order TIPS Purchase/Transaction. Contractor shall submit all documentation to

and through TIPS to satisfy all bid requirements as outlined by the guidelines of the State of Texas.

N. **Termination of Agreement.**

1. If, for any reason, Contractor shall fail to fulfill in timely and proper manner its obligation under this Agreement, City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination by certified mail, return receipt requested, at the address specified below which shall specifying the effective date thereof, which notice must be delivered to Contractor at least three days before the effective date of such termination.
2. In the event City shall fail to pay Contractor in accordance Section G. or H.9., Contractor may terminate this Agreement by providing the City with written notice of such termination by certified mail, return receipt requested, at the address specified below.
3. Upon the City's termination pursuant to this Section N., Contractor shall immediately begin taking any necessary steps to cease work and leave the jobsite. Contractor shall be entitled to payment of such amounts as shall compensate Contractor for the services satisfactorily performed on or before the termination date in accordance with this Agreement. The City shall not be required to reimburse Contractor for any services performed or expenses incurred after notice of termination has been received by Contractor.
4. In the event this Agreement is terminated by either party as a result of the material breach of this Agreement by the other party, the non-breaching party may elect to file suit in a court of competent jurisdiction and recover its actual, but not consequential, damages from the breaching party.

O. **Miscellaneous Provisions**

1. **City Not Obligated to Third Parties**
City shall not be obligated or liable hereunder to any party other than Contractor, including, but not limited to, subcontractors and members of the public.
2. **When Rights and Remedies Not Waive.**
In no event shall the making by City of any payment to Contractor constitute or be construed as a waiver by City of any breach of covenant or any default which may exist on the part of Contractor, and the making of any such payment by City while any such breach or default shall exist in no way impairs or prejudices any right or remedy available to City in respect to such breach or default.
3. **Assignability**
Contractor may not assign, convey or transfer its interest, rights and duties under this Agreement without the prior written consent of City.

4. **Notices**

Any notices, bills, invoices, or reports required by this Agreement shall be sufficient if sent by the parties in the United States mail, postage paid, return receipt requested or via overnight delivery service, to the addresses noted below and shall be effective upon receipt if mailed to:

IF TO CITY:

City of Floresville
1120 D Street
Floresville, TX 78114

IF TO CONTRACTOR:

Heartland Park & Recreation, LLC
Attn: Mike Spencer
P.O. Box 505
White Oak, Texas 75693

Either party may change the address and contact information stated in this paragraph by providing notice to the other party in accordance with this section.

5. **Independent Contractor**

Contractor is an independent contractor under this Agreement and shall not under any circumstances be considered an employee of the City.

6. **Severability**

If any of the terms or provisions of this Agreement are held for any reason to be invalid, void, illegal or unenforceable as a matter of law, the remainder of the Agreement shall remain in full force and effect and shall not be impaired, affected or invalidated by such holding.

7. **Amendment**

The Contract Documents may not be amended or altered except by a written document signed by both parties.

8. **Authority to Execute**

The parties hereby warrant and represent that the undersigned person or persons are properly authorized to execute this Agreement on behalf of the parties.

9. **Governing Law/Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action, arbitration or mediation brought hereunder shall lie in Wilson County, Texas.

10. Attorney's Fees

If it becomes necessary for any party to file suit to interpret or enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party, reasonable attorney's fees and costs of court.

Signed to be effective on the Effective Date.



CITY OF FLORESVILLE, TEXAS

By: Cecelia Gonzalez-Dippel

Print Name: Cecelia Gonzalez-Dippel

Title: Mayor

Date: 2/9/2017

ATTEST:

Monica Cordova
City Secretary

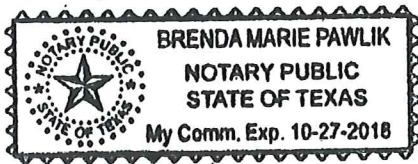
STATE OF TEXAS

§
§
§

COUNTY OF Wilson

Before me, the undersigned authority in and for Wilson County, Texas, on this day personally appeared Cissy Gonzalez-Dippell known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that she is the Mayor of City of Floresville, Texas, and that he is authorized by said legal entity to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this the 9 day of February,
2017
2016.



Brenda Marie Pawlik
Notary Public in and for the State of Texas
Brenda Marie Pawlik
Print Name

My Commission Expires: 10-27-18

HEARTLAND PARK & RECREATION, LLC

By: [Signature]

Print Name: SEAN SPENCER

Title: GENERAL MANAGER

Date: 2/9/2017

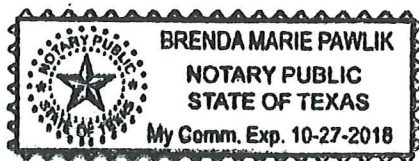
STATE OF TEXAS

§
§

COUNTY OF Wilson §

Before me, the undersigned authority in and for Wilson County, Texas, on this day personally appeared Sean Spencer, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the General Manager of Heartland Park & Recreation, LLC, and that he is authorized by said legal entity to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this the 9 day of February,
2017
2016.



[Signature]
Notary Public in and for the State of Texas

Brenda Marie Pawlik
Print Name

My Commission Expires:

10-27-18

City of Floresville

Athletic Park Project

Upper Park



Description	Number	Unit Cost	Total	Total Project
Baseball Field # 1 - 300'				
13-14 Year Old	1			
Field Construction Clay/Blends	1	\$ 57,500.00	\$ 57,500.00	
Hydro Mulch	1	\$ 6,500.00	\$ 6,500.00	
Field & Dugout Fencing		\$ 34,000.00	\$ 34,000.00	
Backstop		\$ 15,000.00	\$ 15,000.00	
Dug Out Roof (Metal) & Frame	2	\$ 1,500.00	\$ 3,000.00	
Irrigation System	1	\$ 8,500.00	\$ 8,500.00	
Pitchers Rubber		\$ 60.00	\$ 60.00	
Home Plate		\$ 55.00	\$ 55.00	
Set of Bases		\$ 140.00	\$ 140.00	
Bleacher T Shades 12' X 25' X 10' eave	2	\$ 3,469.00	\$ 6,938.00	
Bleachers 4 Row LP - 56 Seat	2	\$ 1,825.00	\$ 3,650.00	
Bleacher Pads - 22' X 15'		\$ 3,300.00	\$ 3,300.00	
Scoreboard 5' X 10' wireless	1	\$ 5,000.00	\$ 5,000.00	
Fout Poles with wings	2	\$ 900.00	\$ 1,800.00	
Dug Out Benches with backs	2	\$ 600.00	\$ 1,200.00	
Field Stripping	1	\$ 500.00	\$ 500.00	
2- Dug Out slabs 8' X 25'		\$ 5.00	\$ 2,000.00	
Concrete Behing Home Plate 20X25		\$ 5.00	\$ 2,500.00	
Outfield Fence Windscreen 6'		\$ 0.75	\$ 2,835.00	
Top Rail with Ties - Yellow		\$ 1.50	\$ 1,425.00	
Portable Fencing 200' Field			\$ 2,229.00	
Sub Total			\$ 158,132.00	
Freight/Delivery			\$ 4,500.00	
Installation - Equipment/Materials			\$ 8,000.00	

Description	Number	Unit Cost	Total	Total Project
Total 285' Baseball Field			\$ 170,632.00	\$ 170,632.00
Baseball Field # 2 - 300'	1			
13-14 Year Old				
Field Construction Clay/Blends	1	\$ 57,500.00	\$ 57,500.00	
Hydro Mulch	1	\$ 6,500.00	\$ 6,500.00	
Field & Dugout Fencing		\$ 34,000.00	\$ 34,000.00	
Backstop		\$ 15,000.00	\$ 15,000.00	
Dug Out Roof (Metal) & Frame	2	\$ 1,500.00	\$ 3,000.00	
Irrigation System	1	\$ 8,500.00	\$ 8,500.00	
Pitchers Rubber		\$ 60.00	\$ 60.00	
Home Plate		\$ 55.00	\$ 55.00	
Set of Bases		\$ 140.00	\$ 140.00	
Bleacher T Shades 12' X 25' X 10' eave	2	\$ 3,469.00	\$ 6,938.00	
Bleachers 4 Row LP - 56 Seat	2	\$ 1,825.00	\$ 3,650.00	
Bleacher Pads - 22' X 15'	660 sq. ft.	\$ 3,300.00	\$ 3,300.00	
Scoreboard 5' X 10' wireless	1	\$ 5,000.00	\$ 5,000.00	
Fout Poles with wings	2	\$ 900.00	\$ 1,800.00	
Dug Out Benches with backs	2	\$ 600.00	\$ 1,200.00	
Field Stripping	1	\$ 500.00	\$ 500.00	
2- Dug Out slabs 8' X 25'	400 sq.ft.	\$ 5.00	\$ 2,000.00	
Concrete Behing Home Plate 20X25	500 sq.ft.	\$ 5.00	\$ 2,500.00	
Outfield Fence Windscreen 6'	3780 sq.ft.	\$ 0.75	\$ 2,835.00	
Top Rail with Ties - Yellow	950 lf	\$ 1.50	\$ 1,425.00	
Sub Total			\$ 155,903.00	
Freight/Delivery			\$ 4,500.00	
Installation - Equipment/Materials			\$ 8,000.00	
Total 285' Baseball Field			\$ 168,403.00	\$ 168,403.00

Description

Baseball Field # 3 - 225'

12 Year Old & Under

Field Construction Clay/Blends

Hydro Mulch

Field & Dugout Fencing

Backstop

Dug Out Roof (Metal) & Frame

Irrigation System

Pitchers Rubber

Home Plate

Set of Bases

Bleacher T Shades 12' X 25' X 10' eave

Bleachers 4 Row LP - 56 Seat

Bleacher Pads - 22' X 15'

Scoreboard 5' X 10' wireless

Foul Poles with wings

Dug Out Benches with backs

Field Stripping

2- Dug Out slabs 8' X 25'

Concrete behind Home Pl 20' X 15'

Outfield Fence Windscreen 6'

Top Rail with Ties - Yellow

Sub Total

Freight/Delivery

Installation - Equipment/Materials

Total 225' Baseball Field

Number	Unit Cost	Total	Total Project
	\$ 47,500.00	\$ 47,500.00	
	\$ 4,000.00	\$ 4,000.00	
	\$ 27,500.00	\$ 27,500.00	
	\$ 15,000.00	\$ 15,000.00	
	\$ 1,500.00	\$ 3,000.00	
	\$ 6,500.00	\$ 6,500.00	
	\$ 60.00	\$ 60.00	
	\$ 55.00	\$ 55.00	
	\$ 140.00	\$ 140.00	
2	\$ 3,469.00	\$ 6,938.00	
2	\$ 1,825.00	\$ 3,650.00	
660 sq. ft.	\$ 3,300.00	\$ 3,300.00	
1	\$ 5,000.00	\$ 5,000.00	
2	\$ 900.00	\$ 1,800.00	
2	\$ 600.00	\$ 1,200.00	
	\$ 500.00	\$ 500.00	
400 sq. ft	\$ 5.00	\$ 2,000.00	
300 sq.ft.	\$ 5.00	\$ 1,500.00	
2460 sq.ft.	\$ 0.75	\$ 1,845.00	
710 lf	\$ 1.50	\$ 1,065.00	
		\$ 132,553.00	
		\$ 2,000.00	
		\$ 7,500.00	
		\$ 142,053.00	\$ 142,053.00

Description

Baseball Field # 4 MP - 225'

Field Construction Clay/Blends					
Hydro Mulch					
Field & Dugout Fencing					
Backstop					
Dug Out Roof (Metal) & Frame					
Irrigation System					
Pitchers Rubber					
Little League Portable Pitching Mound					
Home Plate					
Set of Bases with Double First Base					
Bleacher T Shades 12' X 25' X 10' eave					
Bleachers 4 Row LP - 56 Seat					
Bleacher Pads - 22' X 15'					
Scoreboard 5' X 10' wireless					
Foul Poles with wings					
Dug Out Benches with backs					
Field Stripping					
Dug Out slabs 8' X 25'					
Concrete behind Home Plate					
20' X 15'					
Double First Base					
Outfield Fence Windscreen 6'					
Top Rail with Ties - Yellow					
Sub Total					
Freight/Delivery					
Installation - Equipment/Materials					
Total 225' Baseball Field					

Number	Unit Cost	Total	Total Project
1			
	\$ 47,500.00	\$ 47,500.00	
	\$ 4,000.00	\$ 4,000.00	
	\$ 27,500.00	\$ 27,500.00	
	\$ 15,000.00	\$ 15,000.00	
2	\$ 1,500.00	\$ 3,000.00	
1	\$ 6,000.00	\$ 6,000.00	
1	\$ 60.00	\$ 60.00	
1	\$ 2,800.00	\$ 2,800.00	
1	\$ 55.00	\$ 55.00	
1	\$ 220.00	\$ 220.00	
2	\$ 3,469.00	\$ 6,938.00	
2	\$ 1,825.00	\$ 3,650.00	
660 sq. ft.	\$ 3,300.00	\$ 3,300.00	
1	\$ 5,000.00	\$ 5,000.00	
2	\$ 900.00	\$ 1,800.00	
2	\$ 600.00	\$ 1,200.00	
1	\$ 500.00	\$ 500.00	
400 sq.ft.	\$ 5.00	\$ 2,000.00	
300 sq.ft.,	\$ 5.00	\$ 1,500.00	
	\$ 145.00	\$ 145.00	
2460 sq.ft.	\$ 0.75	\$ 1,845.00	
710 lf	\$ 1.50	\$ 1,065.00	
		\$ 135,078.00	
		\$ 2,000.00	
		\$ 7,500.00	
		\$ 144,578.00	\$ 144,578.00

Description	Number	Unit Cost	Total	Total Project
Baseball/Softball Field Concession/Restroom				
Site Prep & Dirt Work				
Slab/Foundation Undercut/Fill			\$ 5,000.00	
R Panel Construction with interior U Panel	500 CY	\$ 15.00	\$ 7,500.00	
Engineered Metal Building			\$ -	
27'3" X 75'6" Roof Line	1	\$ 36,000.00	\$ 36,000.00	
Around entire Building				
Divider Walls Wood framed				
Ceiling and Walls also includes				
8' Overhang Front & Back				
4' Stone Front & Sides	700 sq.ft.	\$ 20.00	\$ 14,000.00	
with Top Stone & Mortar				
4' Height - Mission Stone				
Concrete Slab 75'6" X 27'3"	2039 sq.ft.	\$ 6.00	\$ 12,234.00	
Perimeter Footings 12" X 18"	184 lf	\$ 12.00	\$ 2,208.00	
Grade Beams 12" X 12"	81 lf	\$ 10.00	\$ 810.00	
Framing Materials			\$ 3,000.00	
Trim & Finish			\$ 500.00	
Interior Finish with U Panels			\$ 1,000.00	
Plumbing - Rough In - Fixtures			\$ 25,000.00	
Floor Drains, Hot Water Heater				
plus Stainless Table & Single				
Sink plus Mop Sink				
Includes toilets - urinals - sinks				
RPZ Fountain Drink Valve			\$ 500.00	
Overhead Door - 6' Roll Ups	2	\$ 700.00	\$ 1,400.00	
& Wind Curtains	2	\$ 2,500.00	\$ 5,000.00	
Concession Equipment Allowance			\$ 10,000.00	
Counter Tops			\$ 5,000.00	
Restroom Partitions, Paper			\$ 8,500.00	

Description	Number	Unit Cost	Total	Total Project
Towel Dispensers, Toilet Paper Dispensers & Soap Dispensers				
Restroom Signs + ADA				
HVAC & Bathroom Vents			\$ 8,000.00	
Electrical & Lighting			\$ 9,000.00	
Other Walks round Building	1025 sq. ft.	\$ 5.50	\$ 5,637.50	
Sub Total			\$ 160,289.50	
Freight/Delivery			\$ 2,000.00	
Building Installation			\$ 12,500.00	
Wood Framing Installation			\$ 3,000.00	
Restroom Amenities Installation			\$ 1,500.00	
Total Project			\$ 179,289.50	\$ 179,289.50
Football Field # 1	1			
160' X 360'				
Field Construction	1	\$ 70,000.00	\$ 70,000.00	
Hydro Mulch	57600 sq. ft.	\$ 0.10	\$ 5,760.00	
Football Goals	1 Pair	\$ 3,908.56	\$ 3,908.56	
Irrigation System	1	\$ 20,000.00	\$ 20,000.00	
Bleacher T Shades 12' X 25' X 10' eave	2	\$ 3,469.00	\$ 6,938.00	
Bleachers 4 Row LP - 56 Seat	2	\$ 1,825.00	\$ 3,650.00	
Bleacher Pads - 22' X 15'	660 sq. ft.	\$ 5.50	\$ 3,630.00	
Scoreboard 5' X 14' - wireless	1	\$ 7,500.00	\$ 7,500.00	
Sideline Benches without backs	4	\$ 400.00	\$ 1,600.00	
Field Striping	1	\$ 3,100.00	\$ 3,100.00	

Description	Number	Unit Cost	Total	Total Project
Elevated Viewing Platform with 6x6' Platform and 6x6' Canopy			\$ 25,137.50	
Sub Total			\$ 151,224.06	
Freight/Delivery			\$ 3,600.00	
Electrical to Scoreboard			\$ 7,500.00	
Installation - Equipment/Materials			\$ 10,000.00	
Total Football/Soccer Fields			\$ 172,324.06	\$ 172,324.06
Sub Total New Athletic Park				\$ 977,275.56
TIPS Discount				\$ (18,807.48)
Sub Total				\$ 958,468.08
Other				
Construction Safety & Misc.			\$ 15,000.00	
Contingency Allowance			\$ 21,531.92	
Signage			\$ 5,000.00	
Total Other			\$ 41,531.92	\$ 41,531.92
Total Project - Upper - City of Floresville				\$ 1,000,000.00

Notes to Bid

Heartland Bid does not include underground electrical, transformers, trenching for power, field lighting and other site lighting other than Solar Lighting identified in the Heartland Bid.

Heartland Bid does include electrical and lighting budgets for Concession-Restroom and Band Shell on quotes where included. All Electrical Bid by Heartland is 5' off slab or location of determined need.

Bid does not include the moving of utilities, water lines, sewer lines, cable or any other like obstruction either known or unknown.

Heartland Bid does not include sewer line, water lines from Tap to 5' off the slab or location of determined need. including pipe, trenching and labor for installation. Provided by the City of Floresville

Bid Proposal in total is subject to final surveying, Engineering on both Civil and MEP based upon the final drawings and requirements set forth. Up or Down

Up or Down

All dirt work and site work is subject to final Civil Engineering

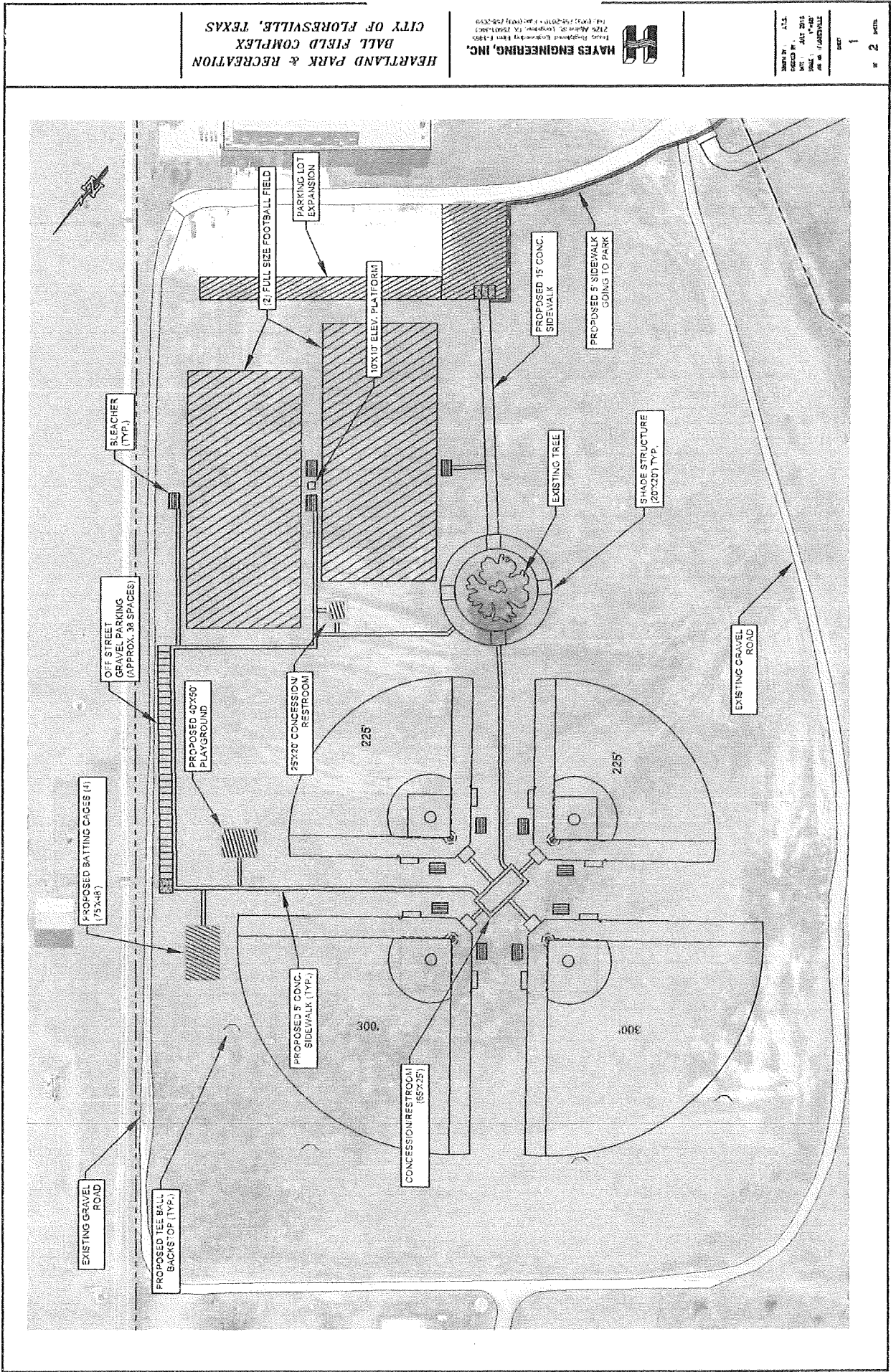
Bid does not include permit fees from any governmental agency

Subject to Final Civil Engineering

Final MEP Engineering, final

Structural Engineering

and City Requirements





Project Inspection Form

Project: City of Floresville Athletic Park Project - City Park

Inspection # _____

Date: _____

Name of Inspectors: _____

Draw #: _____

Percentage of work completed _____ %.

Description

Please describe the current status of the Project since last inspection below

Heartland Park & Recreation, LLC Inspector's Signature

Date: _____

Floresville, Texas City Representative

Date: _____

If you need addition space, use the back of this form.

Please attach Photographs and/or other information that pertains to this Inspection report.

Send all documentation to Heartland Park & Recreation, LLC.

EXHIBIT C



**CONDITIONAL WAIVER
AND
RELEASE UPON PROGRESS PAYMENT**

Project: City of Floresville Athletic Park Project - City Park

On receipt by the signer of this document of a check from _____
(maker of check) in the sum of \$ _____ payable to **HEARTLAND PARK & RECREATION, LLC**, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ to the following extent: stop notice, or bond right the undersigned has on the job of _____ to the following extent: _____.

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

EXHIBIT E

Heartland Park & Recreation, LLC

Authorized Signature

Print Name

Street Address

City / State / Zip

STATE OF TEXAS §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, who first being duly sworn by me to be the person whose name is subscribed to the foregoing, acknowledged to me that they executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

SUBSCRIBED AND SWORN TO AND ACKNOWLEDGED BEFORE ME on this _____ day of _____, 2017, to certify which witness my hand and seal of office.

Notary Public, State of Texas

EXHIBIT E



**CONDITIONAL WAIVER
AND
RELEASE UPON FINAL PAYMENT**

Project: City of Floresville Athletic Park Project - City Park

On receipt by the signer of this document of a check from _____
(maker of check) in the sum of \$ _____, payable to **HEARTLAND PARK &
RECREATION, LLC**, and when the check has been properly endorsed and has been paid by the
bank upon which it is drawn, this document shall become effective to release any mechanic's lien
right, any right arising from a payment bond that complies with a state or federal statute, any
common law payment bond right, any claim for payment, and any rights under any similar ordinance,
rule, or statute related to claim or payment rights for persons in the signer's position that the signer
has on the property of _____ to the following extent: stop notice, or bond right the
undersigned has on the job of _____ to the following extent:

This release covers the final payment to the signer for all labor, services, equipment, or
materials furnished to the property or to _____ (person with whom signer
contracted).

Before any recipient of this document relies on this document, the recipient should verify
evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this
final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and
suppliers for all work, materials, equipment, or services provided for or to the above referenced
project up to the date of this waiver and release.

EXHIBIT F

Heartland Park & Recreation, LLC

Authorized Signature

Print Name

Street Address

City / State / Zip

STATE OF TEXAS §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, who first being duly sworn by me to be the person whose name is subscribed to the foregoing, acknowledged to me that they executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

SUBSCRIBED AND SWORN TO AND ACKNOWLEDGED BEFORE ME on this _____ day of _____, 2017, to certify which witness my hand and seal of office.

Notary Public, State of Texas

EXHIBIT F